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No. 115

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

JOHN A. HAYS, *Petitioner*

v.

ROBERT B. ANDERSON, Secretary of the Treasury, *et al.*,
Respondents

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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MOTION BY THE AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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Applicant, The American Federation of Government Employees, by its counsel of record, hereby respectfully moves this Court for leave to file, as *amicus curiae*, a brief in this proceeding.

NATURE OF APPLICANT'S INTEREST

Applicant is a national organization of civilian federal government employees, consisting of approximately 70,000 members employed by the various departments and agencies of the government throughout the United States. The objects of the Federation are to promote the general welfare of civilian government

employees and efficiency in government service; and to protect federal employees against inequitable and discriminatory employment practices and procedures in the federal service.

Applicant's particular interest in this case rests in the following matters before the Court for determination:

1. At page 4 of their brief, respondents urge:

> "Grievance procedures do not relate to removals, but deal with employee complaints arising in the day-to-day working relationships between employees or between an employee and his superiors."

Applicant vigorously disagrees with this position, and begs leave to urge that, as a matter of law, grievance procedures, such as those adopted by the Treasury Department and other agencies of the government, do relate to removals of federal employees, and especially to removals of non-veteran employees who do not possess, under other statutes or procedures, substantial recourse or appeal on the merits or equity of any removal or discharge, irrespective of how unfair, malicious or inequitable the removal may be (*Service* v. *Dulles*, 354 U.S. 363, 77 S. Ct. 1152; *Watson* v. *The United States*, 355 U.S. 14, 78 S. Ct. 18). Applicant accordingly disagrees with respondent's sweeping assertion that grievance procedures are intended solely to govern relatively trivial complaints arising in day-to-day employment relationships.

2. In the case at bar, it would appear that the Treasury Department itself, contrary to the position now taken by respondents at page 4 of their brief, did construe its own grievance procedure to be applicable to removal (R. 21; Respondent's brief, p. 3). It would also appear that petitioner followed the grievance pro-

cedure prescribed in the Treasury regulations pursuant to Treasury's own invitation, and that Treasury itself participated in attempting to settle this removal grievance through at least three steps of the grievance procedure, up to and including the departmental levels of Commissioner of Internal Revenue and Director of Personnel of the Treasury Department (R. 26, 27, 28). But when Petitioner requested a hearing on the charges against him pursuant to the provisions of the Department's *own* grievance procedure, he was apparently advised that "it is not the policy of the Department to hold hearings on appeals in dismissal actions", and that "nothing was denied you" when the Department refused on "policy" grounds even to consider granting a hearing in line with its own grievance regulations (R. 28).

Applicant submits that once a federal department adopts a detailed grievance procedure to govern the settlement of employee grievances as a means of preventing "restraint, interference, coercion, discrimination or reprisal" in such matters; and once the department specifically notifies a federal employee in a removal case that he "may" appeal the removal decision under the department's grievance procedure; and once the employee elects so to appeal and the department itself participates in one or more summary or administrative steps of the grievance procedure, the department may not thereafter deny the discharged employee a fair and just hearing on the merits, as provided in the grievance procedure, by arbitrarily and unilaterally violating same and declaring, contrary to the department's own regulations, that "it is not the policy of the department to hold hearings".

The right to a hearing is the most precious step in the entire grievance procedure. And, of course, the

most precious right to be protected thereby is the federal employee's right not to be discharged or removed unfairly, maliciously or inequitably. The only level at which the accused can to any degree confront his accusers, and present his full case for determination is at the hearing level. Thus, the grievance procedure would be an hollow mockery indeed if same were to become inapplicable or be withheld in cases where it is most sorely needed to protect the innocent against oppression, discrimination and administrative mischief. And the same result would ensue just as surely as night follows day if a department, having granted the procedure and the protections afforded thereby, were permitted lawfully to violate its own procedures, or to apply same so arbitrarily and discriminatorily that a hearing is granted in relatively unimportant cases, while it is withheld in a removal case, involving grave charges against a government employee, on the ground that the former are serious enough for adjudication, while the discharge presents only "a trivial complaint" or is not within the "policy of the Department" with respect to hearings.

Applicant accordingly submits that the issues of this case, as same relate to the right of a federal employee to a hearing in removal cases, are of overwhelming importance, not only to petitioner, but to every government employee, especially those non-veteran employees who have no statutory right of appeal on the merits of charges brought against them by their superiors. It is submitted further that the Treasury Department's refusal even to consider the granting of a hearing to petitioner in a discharge case (as a matter of "policy") violated not only the department's own regulations and procedures, but also the rule established by the decisions of this Court in *United States ex rel.*

Accardi v. *Shaughnessy*, 347 U.S. 260, 74 S. Ct. 499, 98 L. ed. 681; *Service* v. *Dulles*, *supra*, and *Watson* v. *The United States*, *supra*. The Department failed properly to exercise its discretion in a clearly serious discharge case, and, by so doing, it violated regulations patently applicable to petitioner's removal, having already recognized the applicability to petitioner's discharge of other closely related steps in the very same grievance procedure.

REASON FOR MOTION

As indicated above, applicant believes the basic issues of this case apply not only to petitioner, but to all federal employees, especially non-veterans, who must look to administrative grievance procedures as their main source of protection against inequitable removals and other punitive measures connected with their employment. This aspect of the case was not fully presented by the parties of record.

Finally, this motion is necessary because the attorneys for respondents would not consent to the filing of a brief by applicant as *amicus curiae*, and the Rules of this Court require such motion in the absence of consent by all parties.

CONCLUSION

It is respectfully submitted that this motion and the petition for a writ of certiorari should be granted.

Respectfully submitted,

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September, 1959